1942

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File No. O. Prov. Fund/42

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under

the

Provident Funds Act, 1925

R 10/E

File No. O. Prov. Fund/42.

Std. Sectt. Slip 24 B e.

C O N T E N T S.

Legal Department File O. Provident Fund 1942.

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M.V.V.
30/4.

No.1659.

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 23rd February 194

From

P.N. Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To,

The Accountant General,
Bombay.

Subject:- Policy No.3397 for Rs.500/- of the Bombay Mutual Life Assurance Society Ltd., on the life of Mr. Rajaram Amrit Kulkarni (Account No.F.970).

Sir,

With reference to your letter No.P.F.-5-Int.873/12847 dated the 4th December 1941, on the above subject, I have the honour to state as follows:-

One Rajaram Amrit Kulkarni, Forester in the Office of the Sub-divisional Forest Officer, Satara, has asked the Accountant General, Bombay, for an advance from his General Provident Fund deposits for payment of Insurance Premium on his policy of the Bombay Mutual Life Assurance Society. This policy was orginally assigned to his wife Janakibai as a gift on condition that in the event of her predeceasing him or of his being alive on the date on which the Policy would mature, the right to receive theam monoys under the policy should revert to him as if the assignment to his wife was not made. Janakibai predeceased the Assured and he has now assigned the policy to the Governor of Bombay in form (1) appended to the Bombay General Provident Fund Rules, 1936. The Accountant General doubts the validity of the assignment made in favour of the Governor of Bombay in view of the decision given by the Bombay High Court in a suit brought by one Hassan Jamal Dhanani against the Empire of India Life Assurance Company, Ltd. The decision of the High Court was that since under the Muhammadan Law such an assignment in favour of the wife created a present vested interest in favour of the wife the gift

P.T.O.

was valid and the condition bad. The wife was accordingly absolutely entitled to the ~~policy~~ policy and the policy did not stand revoked by her death before the policy matured. The questions referred for consideration are:-

(1) whether the said High Court decision which relates to an assured governed by the Muhammadan law would also be applicable to the case of an assured governed by the Hindu Law; and

(2) whether the policy can be accepted under the Bombay General Provident Fund Rules.

Question No.(1):- A claim under a life policy is an actionable claim and can be transferred (see illustration (ii) to section 130 read with the definition of an actionable claim in section 3 of the Transfer of Property Act.) Section 2 of the Transfer of Property Act provides that nothing in the second Chapter of this Act shall be deemed to effect any rule of Muhammadan Law. Section 31 in the second Chapter which applies to Hindus but not to Muhammadans enacts that subject to the Provisions of section 12 on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall not happen or in case a specified certain event shall not happen. The condition referred to in this section is a condition subsequent which terminates an interest and revests it in the grantor. The next section i.e. section 32 requires that the condition subsequent should be valid, otherwise it would not have the effect of terminating the interest to which it is attached. While interpreting the provisions of section 31 read with section 130 of the Transfer of Property Act in Ninkileri Lakshmikutty Kettilamma vs. Nambisan (I.L.R. 1939 Mad. 415) which related to similar case of assignment of a life policy by A, a Hindu, to B, his wife, with a proviso that in the event of B predeceasing A or in the event of A surviving the date on which the said policy would mature the money thereunder shall revert to A as if the assignment had not been made Varadachariar J observed: "The only qualification on the rights of the transferee is by way of a defeasance clause (cf. section 31 of the Transfer of Property Act and section 134 of the Indian Succession Act). The result is that so long as the transferee's interest exists she has the whole interest and when the defeasance clause

comes into operation the interest of the person who takes under the defeasance clause is equally an absolute interest." The assignment of a life policy by Rajaram Amrit Kulkarni, a Hindu, in favour of his wife Janakibai in the present case was in similar terms and since Janakibai predeceased Rajaram the defeasance clause came into operation with the result that the life policy reverted to and revested in Rajaram absolutely. Consequently Rajaram Amrit Kulkarni is legally entitled to assign the policy to the Governor of Bombay in form (1) of the third Schedule appended to the Bombay General Provident Fund Rules, 1936. The decision of the Bombay High Court in suit No.1226 of 1939 can have no application to the present case since the parties in that case were Muhammadans to whom section 31 of the Transfer of Property Act did not apply and who were governed by the Muhammadan Law under which a gift when made becomes absolute and any condition which derogates from the completeness of the grant is void (see Mulla's Principles of Muhammadan Law, 11th Edition page 138).

Question No. (2):- Since by the death of Janakibai the life policy has revested in Rajaram Amrit Kulkarni absolutely there appears no legal objection to accepting the assignment of the life policy from Rajaram under rule 19(2) of the Bombay General Provident Fund Rules.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- P.K.Nene.
20/1.

Rembrancer of Legal Affairs.

M.V.V./ 1.5.

Office of the R.L.A.

In view of the Government of India Notification No.F.2/4/34-Poll. dated the 19th September 1934, the provisions of the Provident Fund Act,1925 apply to the Provident Fund established for the benefit of the employees of the Bombay Board of Film Censors as if the said Provident Fund were a Government Provident Fund.

2. To the extent permitted by section 6 of the Provident Funds Act read with rule 10 of the Provident Fund Rules for the staff of the Bombay Board of Film Censors the Board will have full power to make deductions from the amounts standing to the credit of any member of their staff. The deductions will however in no case exceed the amount of the contributions credited by the Board to the account of the subscriber and of any interest which may have accrued on such contributions. In other words, the subscriptions paid into the Fund by the subscriber himself and the interest accruing thereon will not be liable to any deduction by the Board. The reference to "his own contribution" in the resolutions at page 3 ante suggests that by that reference the Board apparently had in mind subscri-tions or deposits by the respective employees and not contributions credited by the Board. In this connection, attention is invited to the definition of "contribution" in section 2(b) of the Provident Funds Act. If, as appears to be the case, the Board has confused the expressions "constribution" and "subscription" as referred to in section 2(b) of the Act, it may consider the advisability of revising its resolutions suitably. Attention is also invited to section 3 of the Act which provides that a compulsory deposit in any Government Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositer. If, as appears to be the case, the two employees of the Board have already assigned the amounts of their Provident Fund to third parties such assignment would have no legal validity in view of the specific provisions of section 3.

Sd/- P.N.Menon, 7/4.
Remembrancer of Legal Affairs.

U.R. to N.D. (Poll.) No.3020,dated the 8th April 1942.
M.V.V./1.5.

deen add returned.

2. Meelawa can have no legal claim to any share in the provident fund. The view taken in P.& S.D. office note at pp. 5-7 ante is correct.

Sd/- P.N.M.
18/3.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.2440 dated the 19th March 1942.

M.V.V./1.5.

R.I.No.10463
42.

Submitted.

2. Police Constable Annaji Bando Kulkarni died on 27-5-42 leaving a declaration dated 7-6-29 nominating his brother Sambaji Bando Kulkarni as his nominee, to receive the whole amount standing in his G.P. Fund account . The deceased at the time of his death was unmarried. During the course of the inquiry, the D.S.P. , Belgaum, found that the deceased had left a will dated 24-5-42, which stated that G.P. Fund amount should be distributed equally between his second brother Dattu and his mistress Kamala. It appears that the deceased subscriber had also made an application to the D.S.P. on 24-5-42 requesting him to cancel the nomination made in favour of Sambaji and to substitute instead Dattu and Kamala. The said application was not received by the A.G. before his death. Dattu and Kamala have now put in their claim to the fund on the strength of the will. The P.& S.D. is of the view that under sec. 5 of the Provident Funds Act, 1925, and the rules made thereunder, the will made by a deceased cannot invalidate the nomination previously made by him unless the latter is cancell and replaced by a fresh nomination; that as in the present case the application made by him was recei by the A.G. long time after his death it cannot be regarded as fresh nomination and that the amoun is therefore payable to his nominee brother Sambhaji. R.L.A. is requested to advise whether this view is correct.

3. Under sub-section (1) of section 5 of t Provident Funds Act, 1925 any nomination duly mad in accordance with the rules of the fund, which purports to confer upon any person the right

to receive the whole or any part of the such sum on the death of the subscriber or depositor shall be deemed to confer such right absolutely until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor/ by notice given in such manner and to such authority as is prescribed by those rules. This section contemplates that the original nomination made by a subscriber will entitle the original nominee to receive the provident fund money absolu-tely until such nomination has been varied in the manner indicated therein. In the present case the deceased constable Annaji Bande has made a will on 24-5-42 which he has declared that the amount of his provident fund should be distributed equally between his second brother Dattu and his mistress Kamala. This will varying the original nomination cannot have the effect of cancelling such nomination as the existence of will is immaterial the right of the nominee to the right conferred on him by the nomination is absolute notwithstanding any testamentary or untestamentary disposition of the property (cf. R.L.A.'s opinion Nos. 2900, dated 10-5-35 ; No.0 Prov. Fund-1/29, dated 7-5-29 No. 4307, dated 10-5-38, 2422, dated 3/3/39 and 44 C.W.N. 1143). Rule 30(ii) of the Bom.Gen. Provident Fund Rules, 1936 provides that on the death of a subscriber, when the subscriber leaves no family, if a nomination made by him in accordance with the provisions of rule 7 in favour of any person or persons subsists, the amount to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination. The deceased

subscriber's application dated 24-5-42 cancelling the nomination has not taken effect before his death (cf. rule 7(7)), nor a fresh nomination has been received with the notice of cancellation by the Accounts Officer as required by rule 7(6). This application cannot therefore be considered either as a notice cancelling the original nomination or as a fresh nomination. .(cf. R.L.A.'s opinion No.8566, dated 25-11-38). The amount of the fund is therefore payable to his nominee's brother Sambhaji. The papers may be seen and returned. The view taken by the P.A.S.D. in its office note dated 3-10-42 at p.3 ante (appears ~~seems~~ to be) correct.

Sd/- P.S. Nadkarni
16.10

As at A-A
S.A.S. ~~Sd/-~~ B.G.M.
~~7~~.10.

A.L.R. ~~Sd/-~~ R.T.K. 21/10.

R.L.A. Sd/- Reply as at 'A'
30/10. Id/-P.N.M.
30/10

M.V.V.
1/5.

Office of the R.L.A.

Seen and returned.

2. The view taken by the Political and Services Department in its office note dated 3-10-1942 at p.3 ante is correct.

Id/- P.M.M.
2/11.

Rembrancer of Legal Affairs.

U.R. to P.& S.D. No. 8905 dated the 3rd Nov.42.

M.V.V.
1/5.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the Bombay Provident Fund and the Contributory Provident Fund Rules provide that information regarding the occupation of the subscriber and the witnesses is necessary and must be insisted upon.

2. Under sub-rule (3) of rule 7 of the Bombay Provident Fund Rules every nomination should be in such one of the Forms set forth in the First Schedule as is appropriate in the circumstances; and under sub-rule (5) the subscriber can give a contingent notice of cancellation in such one of the form set forth in the Second Schedule as is appropriate in the circumstances. The Contributory Provident Fund Rules (Bombay) contain similar provisions (see rule 5(3) and (5) of the Rules.). Neither these provisions nor the forms prescribed in the First and Second Schedules to these rules require that information about the occupation of the subscriber and the witnesses should be supplied. Consequently the supply of such information cannot be insisted upon under the rules as they stand. If, however, such information is necessary for audit purposes the forms in the First and Second Schedule to the Bombay Provident Fund Rules and the Contributory Provident Fund Rules will have to be suitably amended for the purpose.

Sd/- P.N.N.
4/12.

Remembrancer of Legal Affairs.

U.R. to F.& S.D. No.9771 dated the 5th December 1942.

M.V.V.
1/3.